

## Message Text

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ACTION EA-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 HA-05 IO-13 /077 W

-----077944 071053Z /21

R 070924Z DEC 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8895

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 19290

E.O. 11652: GDS

TAGS: SHUM, RP

SUBJECT: AQUINO TRIAL REOPENS

REF: MANILA 19057

1. SUMMARY: FIRST SESSION OF REOPENED AQUINO TRIAL WAS DEVOTED TO LEGAL WRANGLING OVER SEMANTICS. TRIBUNAL PRESIDENT RULED THAT AQUINO AND OTHERS ARE STILL CONSIDERED GUILTY AND CONDEMNED TO DEATH, BUT TRIBUNAL REJECTED DEFENSE CONTENTION THAT TRIBUNAL MEMBERS ARE NO LONGER IMPARTIAL. NEXT TRIAL SESSION SCHEDULED FOR DECEMBER 19. ICJ OBSERVERS DAVIS (US) AND DOED (AUSTRALIA) WERE ACCUSED OF "OFFICIOUS INTERFERENCE" BY CHIEF PROSECUTOR WHEN THEY ASKED PERMISSION TO INTERVIEW AQUINO. PRESS COMMENT REVEALS ANXIETY ABOUT WORLD OPINION.  
END SUMMARY.

2. THE MILITARY TRIAL OF SENATOR BENIGNO AQUINO, NPA CHIEF BERNEBE BUSCAYNO AND RENEGADE CONSTABULARY LT. VICTOR CORPUZ RESUMED DECEMBER 5. PRESIDENT MARCOS HAD ORDERED THE TRIAL REOPENED FOLLOWING THEIR CONVICTION AND DEATH SENTENCE NOVEMBER 25. AS EXPECTED, AQUINO REFUSED TO AUTHORIZE HIS ASSIGNED MILITARY LAWYER TO REPRESENT HIM; BUSCAYNO WAS REPRESENTED BY CIVILIAN ATTORNEY JUAN DAVID; CORPUZ ANNOUNCED HE WAS STILL BOYCOTTING THE TRIAL AND DID NOT APPEAR IN THE

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AFTERNOON SESSION.

3. MOST OF THE SIX-HOUR HEARING WAS TAKEN UP BY WRANGLING OVER DEFINITION OF "REOPENING." AQUINO AND DAVID ARGUED THAT THE TRIBUNAL'S DECISION HAD BEEN SET ASIDE AND THAT, UNDER THE MANUAL OF COURTS MARTIAL, TRIBUNAL MEMBERS ARE DISQUALIFIED FROM PARTICIPATING IN RETRIAL OR HEARING BECAUSE THEY HAVE

ALREADY FORMED OPINION ON THE CASE. TRIBUNAL'S LAW MEMBER, COL. BACALLA, REPLIED THAT CASE HAD MERELY BEEN REOPENED AND THAT THIS WAS NEITHER REHEARING NOR RETRIAL. ACCORDING TO BULLETIN TODAY, AQUINO THEN ASKED: "AT THIS STAGE OF THE PROCEEDINGS, DO I REMAIN CONVICTED AND DOES MY SENTENCE TO DIE BY FIRING SQUAD STAY?" TRIBUNAL PRESIDENT BG JOSE SYJUCO REPLIED, "OF COURSE." ACCORDING TO TIMES JOURNAL, SYJUCO ADDED THAT "HE HAS TO PROVE HIS INNOCENCE BY PRESENTING EVIDENCE." AQUINO AND DAVID THEN CHALLENGED THE IMPARTIALITY OF EACH TRIBUNAL MEMBER. TRIBUNAL RECESSED FOR ROUGHLY FIVE MINUTES TO CONSIDER EACH CHALLENGE IN TURN BUT DENIED THEM ALL.

4. AQUINO ALSO ASKED THE TRIBUNAL TO DETERMINE WHO WAS RESPONSIBLE FOR HAVING HIM EXCLUDED FROM THE FINAL TRIAL SESSION BEFORE HIS CONVICTION NOVEMBER 25. HE CLAIMED THAT IF THIS PERSON COULD BE IDENTIFIED IT WOULD NULLIFY THE NEED FOR FURTHER PROCEEDINGS AND COULD LEAD TO A RETRIAL OR REVERSAL OF HIS CONVICTION. THE TRIBUNAL REFUSED TO LOOK INTO THE MATTER.

5. ACCORDING TO TIMES JOURNAL, AQUINO "AT ONE POINT" MADE AN "IMPASSIONED PLEA" THAT "HE WAS NEVER A MEMBER OF THE COMMUNIST PARTY OF THE PHILIPPINES, ADDING THAT NO DOCUMENT CAN PROVE THAT HE WAS A COMMUNIST. HE ALSO DENIED GIVING ARMS TO THE LATE NPA COMMANDER ALIBASBAS, THUS DEFENDING HIMSELF FROM THE CHARGE OF SUBVERSION."

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6. AFTER HIS CHALLENGES WERE DENIED AQUINO SAID HE WAS RESERVING HIS RIGHT TO PRESENT EVIDENCE BEFORE "THE PROPER COURT." HE NOTED THAT A SUPREME COURT HEARING HAS BEEN SET TO HEAR HIS PETITIONS ON DECEMBER 6. MOREOVER, HE SAID, BUSCAYNO INTENDS TO PRESENT WITNESSES AND EVIDENCE IN HIS OWN DEFENSE, AND HE WILL WAIT FOR BUSCAYNO'S PRESENTATION TO CONCLUDE. (COMMENT: THIS IS CONSISTENT WITH SENATOR SALONGA'S OUTLINE OF DEFENSE STRATEGY, BY WHICH AQUINO WILL INDIRECTLY DEFEND HIMSELF THROUGH BUSCAYNO'S DEFENSE -- SEE MANILA 19044).

7. HEARINGS ARE SCHEDULED TO BE RESUMED DECEMBER 19-22 AND 27-29.

8. ICJ INTEREST. THE HEARING WAS ATTENDED BY SAN FRANCISCO LAWYER GEORGE DAVIS (STATE 288357) AND JOHN DOWD, BOTH OF WHOM TOLD JOURNALISTS THEY REPRESENT THE INTERNATIONAL

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COMMISION OF JURISTS. DOWD IS REPORTEDLY PRESIDENT OF THE AUSTRALIAN SECTION OF ICJ AND A MEMBER OF THE NEW SOUTH WALES LEGISLATURE. CHIEF PROSECUTOR COL. JUAN SISON COMPLAINED DECEMBER 6 ABOUT PRESENCE OF DAVIS AND DOWD, CALLING IT "OFFICIOUS INTERFERENCE BY FOREIGN LAWYERS IN OUR LOCAL AFFAIRS," ACCORDING TO DAILY EXPRESS. DAVIS AND DOWD REPORTEDLY SOUGHT PERMISSION FROM SISON AND SYJUCO TO INTERVIEW AQUINO. DOWD CALLED "ABSURD" SISON'S ALLEGATION THAT THEY HAD TRIED "TO PARTICIPATE IN THE PROCEEDINGS AS DEFENSE COUNSEL FOR AQUINO."

9. TIMES JOURNAL EDITORIAL DECEMBER 6, ENTITLED "IN FOREIGN EYES" SAYS: "THE PHILIPPINES, AND THE GOVERNMENT IN PARTICULAR, WILL BE UNDER CLOSE SCRUTINY BY THE WORLD PRESS AND OTHER INTERNATIONAL ORGANIZATIONS, SOME SELF-RIGHTEOUS, OTHERS SINCERE, AND A FEW CYNICAL, DURING THE RETRIAL OF FORMER SENATOR BENIGNO AQUINO. ... THERE WILL BE THE PROFESSIONAL CRITICS AMONG THESE FOREIGN VISITORS WHOSE SOLE MOTIVE IS TO MAKE A MOCKERY OF THE COUNTRY'S HOSPITALITY AND DEMOCRATIC SYSTEM BY TWISTING FACTS TO EMBARRASS THE PHILIPPINES ABROAD. SINCE OURS IS NOT A POLICE STATE, AS MANY UNFRIENDLY SOULS INSIST ON PORTRAYING IT BEFORE THE WORLD, THESE CRITICS WILL BE FREE TO ROAM AT WILL, TALK TO ANYBODY THEY WANT TO AND GATHER AS MUCH PREJUDICIAL MATERIALS AS THEY WOULD WANT TO. WE CAN ONLY CONFIDENTIAL

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APPEAL TO THE SENSE OF FAIRNESS OF THESE VISITORS AND HOPE THAT THEIR REPORT TO THEIR RESPECTIVE COUNTRIES WILL BE FACTUAL, TO SAY THE LEAST."

10. VALENCIA COMMENTED DECEMBER 7: "WHAT'S HAPPENING IN THE REOPENED MILITARY TRIBUNAL HEARINGS ON THE AQUINO CASE CAN'T BE CONSTRUED AS ANYTHING BUT A CIVILIAN TRIAL UNDER THE RULES OF COURT. ... OBVIOUSLY BOTH SIDES ARE TRYING TO GAIN MILEAGE IN WINNING PUBLIC SYMPATHY. WHICH MEANS THE PUBLIC MATTERS A LOT."

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